

By: Ellis

S.B. No. 529

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of installation, transfer, use, or possession of an automated sales suppression device or phantom-ware.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 10, Business & Commerce Code, is amended by adding Chapter 326 to read as follows:

CHAPTER 326. AUTOMATED SALES SUPPRESSION DEVICES; PHANTOM-WARE

Sec. 326.001. DEFINITIONS. In this chapter:

(1) "Automated sales suppression device" means a device or software program that falsifies an electronic record, including transaction data or a transaction report, of an electronic cash register or other point-of-sale system. The term includes a device that carries the software program or an Internet link to the software program.

(2) "Electronic cash register" means a device or point-of-sale system that maintains a register or documentation through an electronic device or computer system that is designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data.

(3) "Phantom-ware" means a hidden programming option that is embedded in the operating system of an electronic cash register or hardwired into an electronic cash register and that may be used to create a second set of transaction reports or to

1 eliminate or manipulate an original transaction report, which may
2 or may not be preserved in a digital format, to represent the
3 original or manipulated report of a transaction in the electronic
4 cash register.

5 (4) "Transaction data" includes data identifying an
6 item purchased by a customer, a price for an item, a taxability
7 determination for an item, a segregated tax amount for an item, an
8 amount of cash or credit tendered for an item, a net amount of cash
9 returned to a customer who purchased an item, a date or time of a
10 purchase, a receipt or invoice number for a transaction, and a
11 vendor's name, address, or identification number.

12 (5) "Transaction report" means a report that:

13 (A) contains documentation of each sale, amount
14 of tax or fee collected, media total, or discount void at an
15 electronic cash register and that is printed on a cash register tape
16 at the end of a day or a shift; or

17 (B) documents every action at an electronic cash
18 register and is stored electronically.

19 Sec. 326.002. AUTOMATED SALES SUPPRESSION DEVICES AND
20 PHANTOM-WARE PROHIBITED; CRIMINAL OFFENSE. (a) A person commits
21 an offense if the person knowingly sells, purchases, installs,
22 transfers, uses, or possesses an automated sales suppression device
23 or phantom-ware.

24 (b) An offense under this section is a state jail felony.

25 SECTION 2. Subdivision (2), Article 59.01, Code of Criminal
26 Procedure, is amended to read as follows:

27 (2) "Contraband" means property of any nature,

1 including real, personal, tangible, or intangible, that is:

2 (A) used in the commission of:

3 (i) any first or second degree felony under
4 the Penal Code;

5 (ii) any felony under Section 15.031(b),
6 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or
7 35, Penal Code;

8 (iii) any felony under The Securities Act
9 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

10 (iv) any offense under Chapter 49, Penal
11 Code, that is punishable as a felony of the third degree or state
12 jail felony, if the defendant has been previously convicted three
13 times of an offense under that chapter;

14 (B) used or intended to be used in the commission
15 of:

16 (i) any felony under Chapter 481, Health
17 and Safety Code (Texas Controlled Substances Act);

18 (ii) any felony under Chapter 483, Health
19 and Safety Code;

20 (iii) a felony under Chapter 153, Finance
21 Code;

22 (iv) any felony under Chapter 34, Penal
23 Code;

24 (v) a Class A misdemeanor under Subchapter
25 B, Chapter 365, Health and Safety Code, if the defendant has been
26 previously convicted twice of an offense under that subchapter;

27 (vi) any felony under Chapter 152, Finance

1 Code;

2 (vii) any felony under Chapter 32, Human
3 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
4 involves the state Medicaid program;

5 (viii) a Class B misdemeanor under Chapter
6 522, Business & Commerce Code;

7 (ix) a Class A misdemeanor under Section
8 306.051, Business & Commerce Code;

9 (x) any offense under Section 42.10, Penal
10 Code;

11 (xi) any offense under Section 46.06(a)(1)
12 or 46.14, Penal Code;

13 (xii) any offense under Chapter 71, Penal
14 Code; ~~or~~

15 (xiii) any offense under Section 20.05,
16 Penal Code; or

17 (xiv) an offense under Section 326.002,
18 Business & Commerce Code;

19 (C) the proceeds gained from the commission of a
20 felony listed in Paragraph (A) or (B) of this subdivision, a
21 misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii) of
22 this subdivision, or a crime of violence;

23 (D) acquired with proceeds gained from the
24 commission of a felony listed in Paragraph (A) or (B) of this
25 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),
26 (xi), or (xii) of this subdivision, or a crime of violence;

27 (E) used to facilitate or intended to be used to

1 facilitate the commission of a felony under Section 15.031 or
2 43.25, Penal Code; or

3 (F) used to facilitate or intended to be used to
4 facilitate the commission of a felony under Section 20A.02 or
5 Chapter 43, Penal Code.

6 SECTION 3. This Act takes effect September 1, 2013.